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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,337	10/21/2003	Kenneth J. Juncker	AG-117US	2196
24314	7590	07/26/2004	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			NOVOSAD, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 07/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

SUPPLEMENTAL Office Action Summary

Application No.

10/690,337

Applicant(s)

JUNCKER, KENNETH J.

Examiner

Christopher J. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

SUPPLEMENTAL DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, the recitation "near" is indefinite since "near" is a relative term and it is unclear as to exactly what is meant by "near".

In claim 2, line 2 and in claim 11, line 1, it is unclear of what the "first end" is referring to.

In claim 4, line 1, the recitation "pull-type" is indefinite since it is unclear as to what is intended by "-type".

In claim 4, line 1 and in 12, line 5, it is unclear as to what the recitation "it" is referring to.

In claim 25, line 3, the recitation "the main inner surface" lacks proper antecedent basis.

In claim 26, line 2 and in claim 28, line 3, the recitation "the outwardly-facing lug-engaging surfaces" lacks proper antecedent basis and should be corrected to --the outwardly-facing lug-engagement surfaces--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Clausen.

With respect to claim 1, Clausen shows an earth working scraper (Figs. 1-3) comprising:

a scraper blade 10 for scraping earth from a ground surface;

a receiving area (Fig. 3, right side) located near the blade for receiving earth scraped from the ground surface by the blade 10;

a rotatable axle (necessarily present in Fig. 1) for providing movement of the scraper (Figs. 1-3) to allow the blade 10 to scrape the earth, the axle (necessarily present in Fig. 1) connected with respect to the blade 10 and receiving area (right side of Fig. 3); and

a track apparatus (unnumbered) connected with respect to the rotatable axle (necessarily present in Fig. 1), the track apparatus (unnumbered) including:

a continuous flexible track (unnumbered) having an upper length (unnumbered) and a ground-engaging lower length (unnumbered) and including an inner surface (unnumbered);

an axle wheel (unnumbered) mountable to the rotatable axle (necessarily present in Fig. 1) for rotational movement therewith, the axle wheel (unnumbered) engaging the inner surface of the flexible track (unnumbered) along the upper length (unnumbered) to drive the flexible track (unnumbered) in response to rotation of the axle (necessarily present in Fig. 1); and

a frame (unnumbered) for mounting the axle wheel (unnumbered).

As to claim 2, a first end (unnumbered) is adapted for attachment to a prime mover (unnumbered) and a second end (unnumbered) includes the rotatable axle (necessarily present in Fig. 1).

Regarding claim 3, two track apparatus (unnumbered) are positioned at the second end (unnumbered) and axially aligned.

With respect to claim 5, the scraper (Figs. 1-3) is connected to the prime mover (unnumbered) by a hitch (unnumbered).

As to claim 6, the rotatable axle (necessarily present in Fig. 1) is necessarily powered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clausen in view of Wigoda.

Clausen shows the structure of the scraper as noted.

The claims distinguish over Clausen in requiring (1) the scraper to be a pull-type scraper such that it is towed by the prime mover and the rotatable axle of the scraper is not powered (as required in claim 4); (2) the receiving area to be an interior bin, the interior bin to be located adjacent to the scraper blade (as required in claim 7); (3) a tractor section and a scraper section, the scraper section to include the blade, receiving area, axle and track apparatus, the tractor

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section to include a pair of ground-engaging wheels (as required in claim 8); (4) the ground engaging wheels to be powered (as required in claim 9); and (5) the rotatable axle to be powered (as required in claim 10).

Wigoda shows (1) a scraper 24 being a pull-type scraper such that it is towed by the prime mover 12 and the rotatable axle (unnumbered; pin connecting 24 and 14) of the scraper 24 is not powered (as required in claim 4); (2) the receiving area 14 is an interior bin 14, the interior bin 14 is located adjacent to the scraper blade 6 or 24 (as required in claim 7); (3) a tractor section 12 and a scraper section 6 or 24, the scraper section 6 or 24 including the blade 6 or 24, receiving area 14, axle (unnumbered) and track apparatus, the tractor section 12 including a pair of ground-engaging wheels 22 (as required in claim 8); (4) the ground engaging wheels 22 being powered (as required in claim 9); and (5) the rotatable axle (unnumbered) being powered (as required in claim 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the structure noted of Wigoda in the apparatus of Clausen for greater versatility of use.

Claims 12-18, 25-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clausen in view of Kelderman.

Clausen shows the scraper as noted.

With respect to claim 12, Clausen shows a track apparatus (unnumbered) that further includes a plurality of wheels (unnumbered) engaging the inner surface (unnumbered) of the track (unnumbered), including leading (unnumbered) and trailing (unnumbered) idler wheels, and wherein:

the frame (unnumbered) is of a uni-body construction (note Fig. 1) such that it includes fixed-mounts (unnumbered) in fixed relative positions (unnumbered), each fixed-mount (unnumbered) defining an axis (unnumbered);

the axle wheel (unnumbered) is rotatably mounted to one of the fixed-mounts (unnumbered) and turns on the respective fixed-mount axis (unnumbered);

one of the idler wheels (unnumbered) is rotatably mounted to one of the fixed-mounts (unnumbered) and turns on the respective fixed-mount axis (unnumbered).

As to claim 13, Clausen shows that the frame (unnumbered) defines a lateral recess (unnumbered) receiving the axle wheel (unnumbered).

Regarding claim 14, the frame (unnumbered) of Clausen includes a spindle hub (unnumbered) for rotatably receiving the rotatable axle (unnumbered).

With respect to claim 15, the fixed-mounts (unnumbered) comprise apertures (unnumbered) for receiving axles (unnumbered) therethrough.

As to claim 16, the trailing idler wheel (unnumbered) is rotatably mounted to one of the fixed-mounts (unnumbered) and the leading idler wheel (unnumbered) is rotatably mounted to the idler-mount (unnumbered).

Regarding claim 17, the trailing idler wheel (unnumbered) comprises a pair of axially-aligned wheels (unnumbered, since two tracks, unnumbered, are present) and the leading idler wheel (unnumbered) comprises a pair of axially-aligned wheels (unnumbered, since two tracks, unnumbered, are present).

With respect to claim 18, the track apparatus (Fig. 1) further comprises a leading idler assembly (unnumbered) attached to the frame (unnumbered) at one of the fixed mounts

(unnumbered), the leading idler assembly (unnumbered) including the leading idler wheel (unnumbered) engaging the flexible track (unnumbered).

The claims distinguish over Clausen in requiring (1) at least one bogie wheel to engage only a middle portion of the lower length of the track, the at least one bogie wheel to be rotatably mounted to one of the fixed-mounts and to turn on the respective fixed-mount axis, and an idler-mounting bracket to be pivotably mounted to another of the fixed-mounts and to pivot on the respective fixed-mount axis, the bracket to have an idler-mount defining an idler-mount axis at which the other idler wheel is rotatably mounted in variable positions with respect to the frame; (as required in claim 12); (2) the flexible track to include spaced lugs projecting from the inner surface, each lug terminating in a distal surface spaced inwardly from the main inner surface, and wherein the axle wheel comprises:

- a central hub portion mountable on the axle for rotational movement therewith;

- a radially-extending portion terminating in a circumferential edge; and

- a peripheral portion affixed to the circumferential edge and having outwardly-facing lug-engagement surfaces positioned for engagement with the distal surfaces of the track lugs (as required in claim 25); (3) the peripheral portion to include an outer rim forming the outwardly-facing lug-engaging surfaces (as required in claim 26); (4) the outer rim to include a plurality of spaced openings therein (as required in claim 27); (5) the peripheral portion to include peripherally-spaced cross-members affixed to the circumferential edge and forming the outwardly-facing lug-engaging surfaces (as required in claim 28); (6) the axle wheel to be substantially free of side structure in positions laterally adjacent to the lug-engagement surfaces and radially beyond the circumferential edge, whereby the track lugs are free to adjust their

precise positions of engagement with the lug-engagement surfaces (as required in claim 29); (7) the outwardly-facing lug-engagement surfaces to be substantially planar (as required in claim 30); (8) the peripheral portion affixed to the circumferential edge to have radially-projecting drive members defining lug-receiving gaps therebetween, the outwardly-facing lug-engagement surfaces to be within the lug-receiving gaps in position for engagement with the distal surfaces of the track lugs, and the axle wheel to be substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces between adjacent pairs of the drive members and radially beyond the circumferential edge, whereby the track lugs are free to adjust their precise positions of engagement with the lug-engagement surfaces (as required in claim 31); (8) the peripheral portion to include a plurality of spaced openings for allowing debris to pass through the peripheral portion (as required in claim 32); (9) the outwardly-facing lug-engagement surfaces to be substantially convex (as required in claim 33); and (10) the axle wheel to be substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces between adjacent pairs of the drive members and radially beyond the circumferential edge, whereby the track lugs are free to adjust their precise positions of engagement with the lug-engagement surfaces (as required in claim 35).

Kelderman shows (1) at least one bogie wheel 102 that engages only a middle portion (unnumbered) of the lower length (unnumbered) of a track 219, the at least one bogie wheel 102 being rotatably mounted to one of the fixed-mounts (unnumbered) turning on the respective fixed-mount axis (unnumbered), and an idler-mounting bracket 26,28 that is pivotably mounted to another of the fixed-mounts (unnumbered) and pivots on the respective fixed-mount axis (unnumbered), the bracket 26,28 having an idler-mount (unnumbered) defining an idler-mount

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axis (unnumbered) at which the other idler wheel 29 is rotatably mounted in variable positions with respect to the frame; (as required in claim 12); (2) the flexible track 219 including spaced lugs 220 projecting from the inner surface (unnumbered), each lug 220 terminating in a distal surface (unnumbered) spaced inwardly from the main inner surface (unnumbered), and the axle wheel comprising:

a central hub portion (unnumbered) mountable on the axle 21 for rotational movement therewith;

a radially-extending portion (unnumbered) terminating in a circumferential edge (unnumbered); and

a peripheral portion (unnumbered) affixed to the circumferential edge (unnumbered) and having outwardly-facing lug-engagement surfaces 51,53 positioned for engagement with the distal surfaces (unnumbered) of the track lugs 220 (as required in claim 25); (3) the peripheral portion (unnumbered) including an outer rim (unnumbered) forming the outwardly-facing lug-engaging surfaces 51,53 (as required in claim 26); (4) the outer rim (unnumbered) including a plurality of spaced openings (between members 51,53) therein (as required in claim 27); (5) the peripheral portion (unnumbered) including peripherally-spaced cross-members 51,53 affixed to the circumferential edge (unnumbered) and forming the outwardly-facing lug-engaging surfaces 51,53 (as required in claim 28); (6) the axle wheel 425 being substantially free of side structure in positions laterally adjacent to the lug-engagement surfaces 51,53 and radially beyond the circumferential edge (unnumbered), whereby the track lugs 220 are free to adjust their precise positions of engagement with the lug-engagement surfaces 51,53 (as required in claim 29); (7) the outwardly-facing lug-engagement surfaces 51,53 being substantially planar (as required in

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claim 30); (8) the peripheral portion (unnumbered) being affixed to the circumferential edge (unnumbered) to have radially-projecting drive members 51,53 defining lug-receiving gaps (unnumbered) therebetween, the outwardly-facing lug-engagement surfaces 51,53 being within the lug-receiving gaps (unnumbered) in position for engagement with the distal surfaces (unnumbered) of the track lugs 220, and the axle wheel 425 being substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces 51,53 between adjacent pairs of the drive members 51,53 and radially beyond the circumferential edge (unnumbered), whereby the track lugs 220 are free to adjust their precise positions of engagement with the lug-engagement surfaces 51,53 (as required in claim 31); (8) the peripheral portion (unnumbered) including a plurality of spaced openings (unnumbered) for allowing debris to pass through the peripheral portion (unnumbered) (as required in claim 32); (9) the outwardly-facing lug-engagement surfaces 51,53 being substantially convex (as required in claim 33); and (10) the axle wheel 425 being substantially free of side structure in positions which are laterally adjacent to the lug-engagement surfaces 51,53 between adjacent pairs of the drive members 51,53 and radially beyond the circumferential edge (unnumbered), whereby the track lugs 220 are free to adjust their precise positions of engagement with the lug-engagement surfaces 51,53 (as required in claim 35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the structure noted of Kelderman in the apparatus of Clausen for greater versatility of use.

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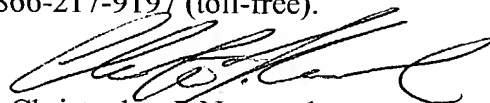
Allowable Subject Matter

Claims 11, 19-24 and 34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

July 15, 2004